

HOUSE BILL REPORT

HB 2106

As Reported by House Committee On:
Commerce & Labor
Appropriations

Title: An act relating to farm labor contractors.

Brief Description: Revising provisions for farm labor contractors.

Sponsors: Representatives Kenney, Sells, Conway, Clibborn, Hunt, Santos, Simpson and Ormsby.

Brief History:

Committee Activity:

Commerce & Labor: 2/20/07, 2/23/07 [DP];

Appropriations: 3/3/07, 3/5/07 [DP].

Brief Summary of Bill

- Modifies the state farm labor contractor law, including provisions on licensing, bonding, contractor duties, nondiscrimination, and transportation safety.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: Do pass. Signed by 5 members: Representatives Conway, Chair; Wood, Vice Chair; Green, Moeller and Williams.

Minority Report: Do not pass. Signed by 2 members: Representatives Condotta, Ranking Minority Member and Chandler, Assistant Ranking Minority Member.

Staff: Jill Reinmuth (786-7134).

Background:

State law provides for licensing and regulation of farm labor contractors by the Department of Labor and Industries (Department). The definition of "farm labor contractor" is a person who, for a fee, recruits, solicits, employs, supplies, transports, or hires agricultural employees.

Non-profit corporations that provide farm labor contracting activities for members are exempt from the licensing requirement.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

License - Requirements for Issuing

To obtain a farm labor contractor license for one or two years, an applicant must: submit a license application; pay a license fee; provide proof of liability insurance; file a surety bond or other security of at least \$5,000; disclose whether the applicant's license has ever been suspended, revoked or denied; and disclose whether the applicant has outstanding judgments in state or federal court. In addition, the Director of the Department (Director) must be satisfied as to the applicant's "character, competency, and responsibility." The Director may not issue a license to an applicant who sells intoxicating liquor where the applicant operates as a contractor, or whose license has been revoked in the past three years.

To renew either a one-year or a two-year farm labor contractor license, the contractor must pay the license fee and provide proof of a renewed surety bond. To renew a two-year license, the contractor must also file a written application disclosing certain information required in the original application.

License - Grounds for Denial, Revocation, and Suspension

To revoke, suspend, or refuse to issue or renew a license, the Director must determine that the farm labor contractor: violated the state farm labor contractor law or other state laws regulating agricultural employment; made misrepresentations or false statements in its application; induced agricultural employees to violate existing employment contracts; or has unsatisfied judgments in state or federal court. Any person may protest the grant or renewal of a license.

Contractor - Duties and Prohibited Acts

Farm labor contractors must give agricultural employees information about their compensation and conditions of employment, as well as other work-related information. Contractors must also keep employment records.

Nondiscrimination

Farm labor contractors and agricultural employers are prohibited from discriminating against agricultural employees for pursuing their rights under the state farm labor contractor law.

Civil Actions

Persons injured by violations of the state farm labor contractor law may bring a suit in court for damages.

Transportation Safety Standards

Federal transportation safety standards applicable to agricultural employees require that: vehicles comply with federal vehicle safety standards; drivers have valid motor vehicle operator's licenses; and vehicles are insured against liability for damages to persons or property. Although these standards apply to the transportation of most agricultural employees, they do not apply to: transportation on certain machinery or equipment while an agricultural employee is planting, cultivating or harvesting agricultural commodities or caring

for livestock and poultry; transportation with immediate family members; transportation of H-2A workers; and certain car pools.

Summary of Bill:

State law providing for the regulation of farm labor contractors is changed. The exemption for non-profit corporations which perform farm labor contracting activities for its members is eliminated.

License - Requirements for Issuing

The requirements for obtaining a one-year farm labor contractor license include executing a written application for each year, rather than only the first year, that the applicant seeks to operate as a contractor. (Two-year licenses are eliminated.) The applicant must pass an examination designed to test the applicant's ability, knowledge, and proficiency to conduct and manage the business of a farm labor contractor in compliance with applicable laws. The applicant must demonstrate full compliance with the state farm labor contractor law and other federal and state laws. The applicant must also disclose whether the applicant has outstanding debts from final administrative determinations or judgments in any state or federal court, and whether the applicant is not in compliance with the payment terms of settlement agreements in any state or country.

License - Grounds for Denial

The grounds on which the Director must deny an application include: material misrepresentations or material false statements in the application; a failure to fully satisfy outstanding debts from final administrative determinations or judgments in any state or federal court; a failure to comply with the payment terms of settlement agreements in any state or country; a final administrative or judicial determination that the applicant violated civil or criminal laws that, for one or more employees, resulted in serious financial harm or created the danger of serious physical harm; or a revocation of a Washington or federal farm labor contractor license within three years of the date of application. The Director may deny an application if a license from another state was revoked within three years of the date of application.

License - Revocation and Suspension

The circumstances in which the Director may immediately revoke or suspend a license include: the contractor engaged in actions that would result in the denial or refusal of an application for a license; the contractor's character, competency, or responsibility was not satisfactory; there was a change in the conditions under which the license was issued; the contractor violated or failed to comply with Washington laws relating to agricultural employment; or the contractor solicited or induced the violation of existing employment contracts. The Director also may immediately revoke or suspend a license if there is a danger to the public health, safety, or welfare from the contractor's continued operations. The

Director may permit a contractor to continue operating to complete contracts where workers have commenced work, so long as the Director monitors the operations during that time.

Surety Bond

The surety bond insures payment of sums owed to agricultural workers in the event of license revocation as well as compliance with the state farm labor contractor law. The bond is conditioned on payment of damages awarded in civil action as well as sums owed to workers under contract.

The amount of the bond varies depending on the number of employees employed by the contractor. If less than 21 agricultural workers are employed, the amount must be at least \$10,000. If 21 to 50 agricultural workers are employed, the amount must be at least \$20,000. If more than 50 workers are employed, the amount must be at least \$30,000.

In addition, the Director must increase the amount of the bond for the first year that the contractor participates in an agricultural guest worker program and is liable for repatriation costs. An increase is not required if the contractor demonstrates that it has the financial capacity to return workers to their homes in their country of origin and a record of operating as a farm labor contractor in compliance with applicable laws for at least two years. The Director may increase the amount of the bond for subsequent years that the contractor participates in agricultural guest worker programs and is liable for repatriation costs.

The Department, when bringing suit upon the farm labor contractor's surety bond, must give notice of the action to agricultural employers for whom the contractor performed any farm labor contracting activity. The failure to give such notice does not bar the action.

Contractor - Duties and Prohibited Acts

The duties of farm labor contractors include complying with all agreements, contracts, and conditions of employment entered into between contractors and third persons. Contractors must furnish workers with a description of the amount of fees charged to the worker and the method of such payment or reimbursement. Contractors are prohibited from charging fees to agricultural workers that exceed 25 percent of gross wages to be paid for the first 180 hours of work.

Farm labor contractors, agricultural employers, and agricultural workers may not exempt themselves from the burdens or waive the benefits of the state farm labor contractor law, and any agreement that does so is void. This prohibition must be described in the information that contractors must give to workers.

Nondiscrimination

The persons who are prohibited from discriminating against agricultural workers for pursuing their rights under the state farm labor contractor law include agents acting on behalf of contractors and agricultural employers. The actions which are prohibited specifically include intimidating, threatening, restraining, coercing, and blacklisting agricultural workers.

Complaints

The processes for filing and investigating a confidential complaint, giving notice to the party who is the subject of the complaint, and issuing a citation to the party are established. The Director may issue the citation only if there is a sufficient basis without relying on information provided by a person whose identity is protected from disclosure.

Transportation Safety Standards

Farm labor contractors must ensure that: vehicles conform to federal and state safety standards; drivers have valid licenses to operate the vehicles; licenses specify that they are authorized to transport agricultural workers; and occupants have properly secured seats and properly functioning seatbelts. The Director must allow contractors to demonstrate compliance with transportation safety standards using the same documents used to demonstrate compliance with federal motor vehicle safety provisions. Transportation safety standards do not apply to private vehicles not registered to, or owned or controlled by, agricultural employers or farm labor contractors.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) Our state learned some lessons two years ago, when an out-of-state contractor came to Washington and brought hundreds of foreign guest workers. The contractor violated numerous state laws. The Department of Labor and Industries was caught flat-footed.

Our state now has the opportunity to plan for the future. There are many other farm labor contractors eager to begin operations here in Washington.

It is in everyone's best interests -- including the good, honest contractors in our state -- to ensure that all of the contractors comply with our state's labor standards, and to give the Department the tools it needs to deal quickly with the contractors that don't.

This bill strengthens our law. It gives the Department the authority it needs to do its job. It clarifies the requirements for getting and keeping a farm labor contractor license. It strengthens protections for workers.

This bill is still a work in progress. Some areas need further clarification. It is an important step to ensure that agricultural workers are protected.

Federal law provides for importing H-2A workers. Last year there were 21 applications. This year there are already 30 applications in the pipeline. The use of the H-2A program is

increasing, but the farm labor contractor act has not kept up. Recent abuses have brought the issue to light.

This bill is substantially the same as last year's bill with a few changes. House Bill 2106 covers all types of businesses. It also increases the bond requirements to make them comparable to Oregon and California. It ensures that workers have a way home, so they aren't stranded in the U.S. or at the border of their country. It limits exorbitant recruitment fees. It protects workers from dangerous transportation.

Congress will pass immigration reform and it will include guest worker provisions. We need a complete law to protect these workers. There need to be limits on recruitment fees and standards for safe transportation.

We learned in the process with Global Horizons that the Department doesn't have the tools it needs. As labor supply concerns rise, we need to get ahead of the curve.

(With concerns) Farm labor contractors can be good for everyone. It is in everyone's interest to encourage good operators. The fear is that, in the process of trying to get the bad guys, we go after the good operators.

The last major update of the farm labor contractor act was in 1985. There have been other updates since then.

The law should have a narrow focus so that it only covers true farm labor contractors. It should encourage registration. It should not impose restrictions on the H-2A program.

The law should clearly exclude sheds. They should not be covered under the farm labor contractor act.

The use of workers' compensation funds for this program is not appropriate. The funds need to come from a different source.

There is a lot of work to be done, but we will work however long it takes.

(Available for questions) The issue of farm labor contractors is an important one, especially in the agricultural community. This bill protects vulnerable workers, protects those who are in compliance, and gives the Department needed tools.

(Opposed) None.

Persons Testifying: (In support) Representative Kenney, prime sponsor; Rachel da Silva, Columbia Legal Services, Graciela Lopez; Jorge Madrazo, Sea Mar Community Health Centers; and Jeff Johnson, Washington State Labor Council.

(With concerns) Dan Fazio, Washington Farm Bureau; Suzanne and Scott Raymond, Raymond Evergreens; Kris Tefft, Association of Washington Business; Chris Cheney, Washington Growers League; and Dave Ducharme, Yakima Valley Growers & Shippers Association.

(Available for questions) Judy Schurke, Department of Labor and Industries.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 19 members: Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Hunt, Hunter, Kagi, Kenney, Kessler, McDermott, McIntire, Morrell, Pettigrew, Schual-Berke, Seaquist and P. Sullivan.

Minority Report: Do not pass. Signed by 15 members: Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Buri, Chandler, Dunn, Grant, Haigh, Hinkle, Kretz, Linville, McDonald, Priest and Walsh.

Staff: Owen Rowe (786-7391).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Commerce & Labor:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill updates the Washington Farm Labor Contractor Act (Act) which regulates contractors who recruit or employ agriculture workers in the state. Use of the guest worker permit in the farm industry is increasing but the Act has not kept pace. Abuses of both U.S. workers and foreign guest workers in recent years in the farm labor industry demonstrate the need for this bill. Violations have occurred and have hurt workers and the farm industry in the state. The world of labor recruiting has changed since the last review of this Act.

Workers living in isolated rural locations need the protection of clear, enforceable standards that meet the requirements of the 21st century international labor market. Important features of the bill include: ensuring guest workers can return home, updating the bonding requirements, protecting workers from dangerous transportation, and protecting workers from exorbitant recruitment fees. These updates are needed to protect workers and growers in the state.

(Opposed) A farm labor contractor is basically a recruiter or an employment agency for farmers. The funding source in this bill is the Workers' Compensation Accident and Medical

Aid funds. There is no logical relationship between industrial insurance and this program. The program should be funded by the General Fund. Small farmers will be paying for this program out of the Workers' Compensation Trust Fund. Programs not related to industrial insurance should not be funded with these funds. If the General Fund is not used then shift the funding to the Supplemental Pension Fund.

Persons Testifying: (In support) Jeff Johnson, Washington State Labor Council AFL-CIO; and Rachel Da Silva, Columbia Legal Services.

(Opposed) Dan Fazio, Washington Farm Bureau.

Persons Signed In To Testify But Not Testifying: None.